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August 20, 2013

Timothy McCausland
City Attorney
City of Lakeland
228 S. Massachusetts Avenue
Lakeland, FL 33801

RECEIVED
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OFFICE OF THE
CITY ATTORNEY

Dear Mr. McCausland,

I appreciate the assignment and opportunity you gave me to study the procedures of the LPD ("LPD") related to public records requests and report back to you on behalf of the City of Lakeland.

I have completed that assignment. In making this report I will comment generally on the requirements of the various laws of the State of Florida related to public records requests and how I perceived they are being responded to by the LPD. I know that your experience and expertise acquired and exhibited while acting as City Attorney makes you very familiar with this subject. However, I understand my task has been to review the procedure of the LPD related to public record disclosures in order to respond to you, the City of Lakeland and the public as to whether, in my opinion, these procedures, if properly applied, are sufficient to assure that public records request are complied with in accordance with both the letter and spirit of the applicable law. Based on my study, I will also make suggestions as to how I perceive public confidence might be better secured as to those processes and practices. In the interest of looking forward

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rather than back, I have not considered it my task to review past requests and the adequacy of responses thereto, real, rumored or hypothetical.

The desire for transparency in government has been a much debated goal since the origin of our government.

In her introduction to the Attorney General's publication, The Government-In-The-Sunshine-Manual, Attorney General Pam Bondi reminds us:

“Upon learning that the delegates to the Constitutional Convention had begun the proceedings by adopting a secrecy requirement, Thomas Jefferson decried their decision as an “abominable precedent” and asked: “Nothing can justify this example but the innocence of their intentions, and ignorance of the value of public discussions.”

Florida's constitution and laws unambiguously reflect the open government philosophy underlying Jefferson's comments. In our state, transparency is not up to the whim or grace of public officials. Instead, it is an enforceable right of the people.”

That being said, one of the apparently inevitable results of the enactment of public records laws, such as Florida's, and the various and numerous provisions of law relating to the restrictions, exemptions and confidentiality, which impact on the full disclosure intended for the public, was to provide a breeding ground for tensions as to the interpretation of the proper

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application of those limitations on disclosure. Nowhere is that tension perhaps more apparent and publicly debated than when a difference of interpretation arises between media interests making a request from law enforcement agencies.

Timely response to requests is an integral element of an unencumbered right to access. Yet, particularly in regard to requests made to law enforcement agencies, a reasonable time is often necessary to redact restricted, exempted and privileged information necessary to insure the public safety responsibilities of law enforcement and the interests of third parties are met and protected.

It is therefore imperative that a process be in place that will enable a quick resolution of any differences of interpretation of applicable laws that may arise. I believe there is properly a natural tendency for law enforcement to seek to protect information that it deems conforms to the various restrictions on disclosure in order to enhance the ability of law enforcement to perform its basic function of protecting the public. Similarly it is natural for media interests to want, and need, to obtain every bit of information available and, where possible, avoid any restrictions or exemptions so as to better enable those media interests to perform their basic functions of gathering information and news so as to properly inform the public.

It is crucial that those two interests, and others, find ways to alleviate the mutual and inevitable tensions so they can work cooperatively together in order that each can perform their important responsibilities to the public and so that the public can have the necessary confidence in both.

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In achieving that cooperative effort the first, and the overriding, of the guiding legal principles that must be encouraged and observed is that our public records laws are enacted to ensure the fullest disclosure possible of all public records. The right of disclosure provided by statute must be liberally interpreted while other provisions of law that serve to permit a limitation of that full disclosures must be strictly and narrowly interpreted. When a requesting party is informed that a full disclosure cannot be made under the applicable law, it is imperative that the responding public official courteously and completely make known to the requesting party the proper lawful basis for limiting disclosures.

If the first responder to a request for public records disclosure is unable to resolve any issue limiting full disclosure to the satisfaction of the requesting party, the matter should be immediately referred up the levels of management until a definitive and satisfactory answer can be given. My study has persuaded me that the LPD has in place to a procedure to accomplish that result. The intended liberality and the spirit of the public records disclosure laws would seem to encourage that where there is a "gray" area of whether a law enforcement exemption to disclosure applies, a decision to waive the exemption and disclose, if it will not be otherwise harmful to the LPD's duty to protect the public, may be made on the side of disclosing the information. I am reliably assured that where possible that will be the policy and practice of the LPD intended to be followed going forward, even if it has been perceived not to have been so in the past.

As a result, if an exemption is technically applicable but it can be determined that applying the exemptions will not contribute to the fulfillment of the responsibilities of the LPD,

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the exemption may be waived and the requested disclosure made. That same principle or philosophy would not apply where the information is made confidential by law and/or is otherwise prohibited by law from being furnished. Those limitations on disclosure are most often provided to protect interests of third parties and the LPD has no discretion in protecting that information.

My study makes it appear to me that the LPD is well advised and trained relative to complying with requests made pursuant to the public records laws and other laws that impact disclosures. If an employee or officer responding to a request is unsure about the applicable law they are adequately informed and trained as to where to go and how to acquire the information and/or decision necessary to comply with requests within a reasonable amount of time.

The culture of openness to access to public records within any government agency is one that must be encouraged and developed and it is most often a "top/down" process.

As was commented during my visit to another agency, "attitude is everything to a smooth operation." Public agencies, because they are required to exert every good faith effort to serve the public as our laws require, must develop an attitude of cooperation and helpful assistance regardless of who the persons are they are attempting to serve. Everyone benefits when all parties to the service being sought can work together with a cooperative attitude. That "attitude" of openness and cooperation is the culture that the law requires.

My interaction with the LPD hierarchy has revealed to me a desire on its part that such an attitude and resulting culture be developed and maintained. I believe there are processes in place

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to ensure that. I am convinced that there is in addition an ongoing review to improve those processes wherever needed. Whether the accomplishment of that expressed desire is in the initial stages, or whether it has been under development for a while is difficult to determine. Clearly there have been disagreements in the past with parties requesting disclosure over restrictions that may apply. I believe such disagreements have been considerably diminished. The ultimate purpose of this desired culture should be that even when disagreements arise, they can be, and are, most often resolved with haste and without acrimony. It is in the very nature of the statutory grant of disclosure rights and the statutory restrictions that may apply that it will not always be possible that resolutions can take place without resort to our courts for assistance, but that should be the exception rather than the norm. When that is necessary it will be hopefully understood to be the natural consequence of the sometimes difficult matter of interpretation of applicable law that prevents full disclosure.

In the course of my study, I have sought and received information and assistance from the Polk County Sheriff Office ("PCSO"), Tampa Police Department, and visited with the editorial staff of The Ledger. Through the cooperation of Sheriff Grady Judd I was able to spend time with Scott Wilder, Director of the Office Communication for the PCSO, and review the procedures and practices employed by the PCSO to provide access to public records. It was most helpful.

I also had the benefit of the same type of experience with Kirby Rainsberger, Senior Assistant City Attorney and Police Legal Advisor for the Tampa Police Department. Both the PCSO and the TPD law enforcement agencies are considerably larger than the LPD.

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Nevertheless, I found the procedures adopted and in place and the practices followed to be very similar in all three agencies. Both representatives of the PCSO and the Tampa Police Department have offered to interact cooperatively with the LPD to review and if necessary consider together additional helpful procedures that might assist each other in furthering the freedom of access to public records.

Every request for access to public records is unique to the particular party making the request and the degree of access obtained is dependent on the circumstances in each case as they may be impacted by the various statutes pertaining to public records disclosure.

In the course of my study, I have met on three separate occasions with LPD Chief Womak. I have also met several times with Assistant Chief Mike Link, Assistant Chief Larry Giddins, Records Section Chief Clerk Stephanie McCranie, Public Records Request Coordinator Tom Trulson, Sergeant Gary Cross, Captain Policastao, and others. I have also met with Roger Mallory and reviewed the September 2012, LPD Public Records handbook and the May 2013, Basic Public Records Training Guide, both developed with his expertise as an aid in undertaking and applying the numerous laws relative to public records disclosures. Both the handbook and the training guide properly inform their users of the laws applicable to public records disclosures. I found the Basic Public Records Training Guide particularly well done and a most useful quick reference for some of the common questions that might arise in providing public records access.

I also requested and participated in an informative meeting with Lenore Devore and Lyle McBryde of The Ledger. The Ledger and its staff probably more often have need of and seek

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access to LPD records than any other single party and therefore there is considerable interaction between the LPD and The Ledger in that regard. In order that the public may be properly served and adequately and fairly informed, it is important that those two entities establish a good working relationship with each other. I hopefully detect on the part of both entities a desire and willingness that that take place. Since I was employed by the City of Lakeland I was in a better position to address that issue more forthrightly with the LPD. I am persuaded that the LPD is taking every step necessary to provide a willing and cooperative openness to their records in accord with the basic interest, purpose and requirements of our public records laws. Chief Womack has assured me of her intent and policy that the LPD will freely provide complete openness to their records except where the law establishes that public safety and third party interests require that certain restrictions are applicable. In addition, it is important in obtaining and maintaining the confidence of the public regarding the performance of its public agencies that the public have the benefit of factual knowledge gained through the objective reporting by the various interested media sources.

It is important that the public receive, from those unbiased sources it can rely upon, information necessary to assure its confidence in the access being provided to public records as intended and required by law. Media sources are the principal supplier of such information to the public, while at the same time those same media sources are also most often the largest single entity making requests for disclosure under public records disclosure laws. When the media is an interested party in the disclosure process it serves to increase their burden to ensure the public receives the unbiased information it deserves and requires.

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Differences are bound to arise between a requesting party and the public agency from whom disclosure is requested. For that reason, it is important that the public and requesting parties have confidence that the LPD will perform its disclosure responsibilities in good faith. It is similarly important to the confidence in the LPD that the public receives fair and unbiased information from any reporting of such differences when they arise. The public records laws provide for penalties to be imposed on public agencies that do not grant disclosure in good faith and in accord with the laws by which they are bound. The disclosing public agencies and the public, on the other hand, must rely solely on the established integrity of any reporting entities for the unbiased accuracy of information reported.

That is why an attitude of mutual respect, confidence and cooperation, developed in recognition and understanding of the responsibilities of each, is so vital between a public agency responding to disclosure requests and any to media entities reporting on such disclosures, even in the face of legitimate differences of opinions. The “playing field” upon which is played out the public receipt of information, its assimilation and the resulting confidence or lack thereof it has in its public agencies is a “playing field” provided and manned by the reporting media as the “gatekeepers.” It will not always be easy to maintain such a desired high level of mutual integrity of purpose, but it is possible and the public deserves it.

It is important for the public to understand that while it is entitled to expect and receive good faith efforts by all public agencies to fully comply with the laws by which they are guided, the fact that mistakes and disagreements may occur is not of itself sufficient to demonstrate the lack of good faith.

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My consideration of the process currently in place with the LPD and the practices being followed regarding compliance with the public records requests has persuaded me that there exists a good faith effort to meet the rightful expectations of the public. It should be expected that the cultures of good faith will show itself in an ever increasing confidence by the public in the LPD. As I have commented, since the development of such a culture is a “top down” process, it has been important to me that in my meetings with Chief Womack and her supervisory staff I have perceived not just an acquiescence in the development of such a culture by a proactive approach to it.

To paraphrase one court’s observations regarding public records disclosure, “the purpose behind the examination of the various provisions for exemptions, restrictions and confidentiality pertaining to public records disclosure is not to decide whether there are sufficient reasons to release requested information, but rather to decide whether there are sufficient reasons not to release it.” It appears to me the LPD understands and is on a course of applying that concept.

It is a goal to be desired and sought that confidence will replace suspicions and that individuals and the general public can have the assurance that their public agencies are acting with the utmost good faith and professionalism. I believe the LPD currently has processes in place and is following practices that reflect a determination to achieve that goal.

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Sincerely,



Monterey Campbell

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